

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James O. Browning

CASE NO. CR 09-3207 JB

DATE: April 27, 2010

TITLE: USA v. Aguilar

COURTROOM CLERK: K'Aun Wild

COURT REPORTER: Danna Everett

COURT IN SESSION: 9:32 a.m.
11:14 a.m.

COURT IN RECESS: 10:33 a.m. = 1:01
11:33 a.m. = :19
TOTAL: 1:20

TYPE OF PROCEEDING: Motion Hearing (see below)

COURT'S RULINGS/DISPOSITION:

1. Defendant David Aguilar's Motion for Disclosure of Identity of Confidential Informant [54] - **INCLINED TO GRANT WITH SAFEGUARDS OF PROTECTIVE ORDER AS DISCUSSED WITH COUNSEL**
2. Defendant David Aguilar's Motion for a Severance [60] - **INCLINED TO DENY WITHOUT PREJUDICE**

ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY: Court

ATTORNEYS PRESENT FOR PLAINTIFF(S): **ATTORNEYS PRESENT FOR DEFENDANT(S):**

John Anderson, AUSA

Erlinda Johnson (Appointed)

PROCEEDINGS:

Court in Session: 9:32 a.m.

Court: Calls case. Counsel enter appearances. Defendant Aguilar present.

Court: Concerned about whether can conduct hearing without co-defendants and their counsel being present. Asks Govt. for its position on same as to motion to compel?

Mr. Anderson: Given there has been no joinder in motion, believes is fine to proceed on motion today.

Ms. Johnson: Defers to Court's discretion.

Court: Reviewed rule 43 re: same - concerned about whether this would just be a question of law. Does not seem co-defendants are required to be here nor does the rule expressly preclude

them from being here. Notes that co-defendants are not in custody and their counsel did receive notice. Will hear motion to compel.

**DEFENDANT DAVID AGUILAR'S MOTION FOR DISCLOSURE OF IDENTITY OF
CONFIDENTIAL INFORMANT [54]**

9:37 a.m. Ms. Johnson: Argues in support of motion and responds to Court's inquiry.

10:02 a.m. Mr. Anderson: Argues in response in opposition to motion.

10:26 a.m. Ms. Johnson: Argues in reply in further support of motion.

Court in recess: 10:33 a.m.

Court in session: 11:14 a.m.

Court: Queries Govt. re: factual assertions in response brief.

Mr. Anderson: Responds. Does not believe *in camera* hearing is necessary for Court to rule on this motion.

DEFENDANT DAVID AGUILAR'S MOTION FOR A SEVERANCE [60]

Court: Asks for Govt.'s position on proceeding with argument on motion today given co-defendants and their counsel are not present?

Mr. Anderson: Same position as to motion just heard.

Ms. Johnson: Again, defers to Court's discretion. Notes no co-defendant joined motion and they were given notice of hearing and have chosen not to be present.

Court: Will hear motion.

11:22 a.m. Ms. Johnson: Argues in support of motion.

11:26 a.m. Mr. Anderson: In lieu of argument will rely on response.

11:27 a.m. Court: Inclined to deny without prejudice - may only enter order on this motion. Inclined to grant motion to disclose identity of CI with safeguards of protective order as discussed with counsel. Anything further?

Mr. Anderson: No.

Ms. Johnson: Asks if will be given some identifying information on CI so as to facilitate contact with that individual?

Court: Will probably give Govt. a choice, can disclose the information or they can make CI available at their offices for defense counsel to talk to.

Court in recess: 11:33 a.m.